IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 419 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GANPATBHAI MAHIJIBHAI PADHIYAR

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 419 of 1996
MR NS SHETH for the appellant.
MR KT DAVE, APP, for the respondent.

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 17/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

1. This appeal arises out of an order made by learned Additional Sessions Judge, Kheda, at Nadiad, on the 30th April, 1996, in Sessions Case No.321 of 1995. By the said order, the appellant-accused came to be convicted for offences punishable under Sections 376 and 506(2) of Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.500/- (in default of payment of fine, simple imprisonment for a further period of one month) for the offence punishable under Section 376, I.P.C. and also sentenced to suffer rigorous imprisonment for a period of 5 years for the offence punishable under Section 506(2), I.P.C. The sentences are ordered to run concurrently.

2. The prosecution, as it emerges from the information (Ex.14) lodged by Manjulaben Ashabhai Solanki before the Police Inspector, Borsad, as under :-

2.1 The informant is residing with her parents and three younger brothers. She is the eldest. The prosecutrix and her parents, at the relevant time, were working as labourers and, as such, they were pulling on their life. They were residing in a field situated near a temple known as 'Toranavmata' at village Borsad. The appellant-accused was residing nearby the field and was working in the field of Somabhai Chaturbhai Solanki. On the date of incident, namely, on 11.5.1995, the first informant went to the field of Patel Ravjibhai Dahyabhai for cutting grass. When she was cutting grass, the accused came from behind, caught hold of her and committed rape. Thereafter, the accused threatened that if the facts are disclosed to anyone, including her parents, then she will be killed and he will see that her parents as well as brothers are killed. After the accused left the field, she went home. According to the prosecutrix, her mother inquired as to why she has come late. But in view of the fact that she was threatened by the accused, she did not disclose the truth. However, she stated that she had pain in her stomach and, therefore, she was crying. On the date of lodging the complaint, i.e. on 15.7.1995, her mother questioned her as to why she was not in menstrual period. However, she did not convey anything. She was repeatedly questioned and, in the meanwhile, her father came. She was beaten and, thereupon, she conveyed that before about two months, on 11.5.1995, when she was in the field of Ravjibhai Patel for cutting grass, the accused committed rape. As she was threatened, she did not tell anyone. On these facts, the police commenced investigation. The prosecutrix was examined by Dr. Kalpanaben (P.W.2). On completion of the investigation, the accused was required

to face the trial for offences punishable under Section 376 and 506(2), I.P.C., for which charge was framed vide Ex.5 on the 30th March, 1996, to which he pleaded and contended that he is entirely innocent.

2.2 The Trial Court, on appreciation of the evidence and considering the submissions made by the learned Public Prosecutor as well as the defence counsel, accepted the prosecution version and recorded an order of conviction and sentenced the accused as aforesaid. Against the said order, the present appeal is preferred by the accused-appellant.

2.3 Learned Additional Public Prosecutor has stated that the accused has already undergone the sentence.

3. We have heard learned Additional Public Prosecutor, Mr. K.T. Dave, on merits of the case. In the instant case, it is required to be noted that Manjulaben was more than 16 years of age at the time of the offence. Learned Additional Public Prosecutor has taken us through the evidence of the complainant. In the cross-examination, she stated that she does not know the accused. Prior to the incident in question, she has never seen the accused. She was not aware about the fact as to where the accused was residing and what is the name of his father. She stated in the cross-examination that, first they went to the house of a Lawyer for lodging the complaint. She stated that she and her parents went to a Lawyer at about 11.00 A.M. The complaint was got written through a Lawyer. The complaint was got typed and, thereafter, her thumb impression was taken which was given to the Police Station.

4. In the cross-examination, she has further stated that they stayed in the Police Station till evening. When they went to lodge the complaint, it was raining. They were also accompanied by her uncles Bhagwansingbhai and Raisingbhai.

5. So far the incident in question in concerned, she has been cross-examined and she has stated that she had been to the field of Ravjibhai with a sickle for cutting grass. She went to the field with a long cotton piece to tie the grass after cutting. Accused came from behind and pushed her. She did not raise any shout. Even when he was lying on her, she did not raise any shouts. She put the sickle aside. It is stated in the cross-examination that her petticoat was taken out and, thereafter, the accused took out her Pyjama. She stated that he did not take out his shirt. Her underwear was

taken out. She stated that she did not raise any shout at that time. She further stated that she remained in the field for about half an hour. Thereafter, the accused put on his clothes and the prosecutrix also put on her clothes. Thereafter, in a bundle, the grass was taken to her house. She stated that, though she had a sickle in her hand, she did not deliver a blow to the accused. She stated that when she reached home, her parents were there, but she did not convey to anyone about the incident. She was questioned on the aspect that the field of Ravjibhai was being cultivated by Somabhai Chaturbhai. She denied the suggestion that they were prevented from entering the field, yet they were entering the field. She denied about the false case being filed and she was giving false deposition.

6. Mother of the prosecutrix, Anjaben (Ex.18), has deposed that the incident took place in the summer. For a period of about a month and a half as Manjula was found not to be in menstrual period, she was given slaps and was asked to tell the true facts. However, she stated that her stomach was paining. It is later on that she stated about the incident in question which took place before about a month and a half. Her mother has stated that, after Manjula conveyed the information, they had been to a lawyer at village Borsad, where a complaint was got typed and was produced before the Police Station. She has identified the accused. She has stated that she is working as a labourer in the field. She comes late in the evening. She stated that by the time she reaches home, it would be darkness. She has stated that her husband is also working as a labourer. From the field of Somabhai Chaturbhai, if one has to go to the field of Ravjibhai, one has to pass through their field. The house of the prosecutrix is also situated there. She has stated that between the field of Ravjibhai Patel and their field, there is a fencing. She also stated that, though Manjula complained on the date of incident about the pain in her stomach, doctor was not consulted.

7. It is required to be noted that the prosecutrix was examined by doctor Kalpanaben (P.W.2). On examination, she stated that in the near past, the prosecutrix had no sexual intercourse. There were no marks of injuries either on her private parts or on her breasts. On examination, it was found that she was not a pregnant lady. On the basis of urine test, it was determined that the prosecutrix was not pregnant. The doctor emphasized that on the body of the prosecutrix there were no marks of injury. She has stated that on the private parts of the prosecutrix also, there were no

marks of injury. She has further stated that the age of the prosecutrix was between 17 and 18. On examination, it was found that she was in habit of having sexual intercourse. Her hymen was torn. From the medical evidence, it is also clear that the prosecutrix was in the habit of having sexual intercourse. The say of her mother that Manjula was not in the menstrual period and, therefore, she gave a slap and inquired from her and, thereafter, the prosecutrix conveyed about the sexual intercourse by the accused does not find support from the medical evidence. From the cross-examination of the prosecutrix, it appears that she was a consenting party. We have pointed out as to what she has stated in the cross-examination about the accused and that she remained in the field even after the intercourse for some time. From the evidence, it appears to be a case of consent. She did not disclose this fact to anyone, though her mother had questioned on the date of incident. But after some time, she stated the reason, upon her mother making an inquiry. It is also doubtful, as she was not pregnant, according to Medical Officer. Learned Additional Public Prosecutor could not pursue the matter further and, in our opinion, in the facts and circumstances of the case, it cannot be said that the prosecution has successfully made out the case. When a girl aged 18 has consented, it is difficult for us to uphold the conviction and, therefore, the appeal stands allowed. Order of conviction and sentence passed by the Trial Court is set aside. Fine, if paid, be refunded.

[B. C. PATEL, J.]

[A. L. DAVE, J.]
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